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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Labor Smart Inc.,

10 Plaintiff,

11 v.

12 Jason Tucker, *et al.*,

13 Defendants.

No. CV-22-00357-PHX-JJT

ORDER

14 Under Local Rule of Civil Procedure (LRCiv) 16.2 providing for differentiated case
15 management, this action, commenced on March 8, 2022, is currently designated a standard
16 track case for the purpose of setting a Pretrial Scheduling Conference. Accordingly,

17 **IT IS ORDERED** that, pursuant to Rule 16 of the Federal Rules of Civil Procedure
18 (Fed. R. Civ. P.), a telephonic Pretrial Scheduling Conference¹ is set for **January 23, 2025,**
19 **at 10:00 AM** (Arizona time), Courtroom #505, Fifth Floor, Sandra Day O'Connor U.S.
20 Courthouse, 401 W. Washington Street, Phoenix, Arizona. Counsel—which includes self-
21 represented parties—are directed to Fed. R. Civ. P. 16 for the objectives of this conference.
22 **COUNSEL WHO WILL BE RESPONSIBLE FOR TRIAL OF THE LAWSUIT FOR**
23 **EACH PARTY SHALL PARTICIPATE IN THE PRETRIAL SCHEDULING**
24 **CONFERENCE.** At least one of the attorneys for each party attending the conference
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27 ¹ Scheduling hearings, as well as most uncontested civil hearing before Judge Tuchi,
28 are being held telephonically. Counsel or self-represented parties have the option to appear
in person. Chambers will e-mail counsel or self-represented parties call-in information
prior to the hearing, at which time they can inform the Court via reply e-mail if they will
appear in person or telephonically.

1 shall have authority to enter into stipulations and make admissions regarding all matters
2 that may be discussed.

3 **IT IS FURTHER ORDERED** that all parties are directed to meet at least 21 days
4 before the Pretrial Scheduling Conference, in accordance with Fed. R. Civ. P. 26(f), to
5 discuss each of the following matters:

6 1. The possibility of consent to trial before a United States Magistrate Judge
7 pursuant to 28 U.S.C. § 636(c), or the use of any alternative dispute resolution mechanism,
8 or the referral of this matter to a special master;

9 2. Any matters relating to jurisdiction, venue, or joinder of additional parties;

10 3. The nature and bases of their claims and defenses and the possibilities for
11 prompt settlement or resolution of the case;

12 4. A schedule of all pretrial proceedings, including any evidentiary hearings
13 pursuant to Rule 702 of the Federal Rules of Evidence (Fed. R. Evid.);

14 5. Whether any party desires a settlement conference before a judicial officer;

15 6. Initial disclosures under Fed. R. Civ. P. 26(a);

16 7. The subjects on which discovery may be needed, when discovery should be
17 completed, and whether discovery should be conducted in phases or be limited to or
18 focused upon particular issues; and

19 8. Any other matters that counsel believe will help resolve the case in an
20 efficient and economical manner.

21 **IT IS FURTHER ORDERED** that, at the Fed. R. Civ. P. 26(f) Case Management
22 Meeting, the parties shall develop a **JOINT PROPOSED CASE MANAGEMENT**
23 **PLAN**. This plan shall include individually numbered brief statements concerning:

24 1. The nature of the case, setting forth in brief statements (no more than one
25 page per side) the factual and legal basis of Plaintiff's claims and Defendant's defenses;

26 2. A list of the elements of proof necessary for each count of the Complaint and
27 each affirmative defense. Where the burden of proof shifts, each party shall list the
28 elements of proof that party must satisfy to prevail. The list of elements of proof must

1 contain citations to relevant legal authority, (*i.e.*, United States statutory or administrative
2 law, United States Supreme Court case law, Ninth Circuit Court of Appeals case law,
3 Arizona case law or statutory law, or other authority as required by choice of law rules);

4 3. The factual and legal issues genuinely in dispute (no more than one page per
5 side), and whether they can be narrowed by stipulation or motion;

6 4. The jurisdictional basis of the case, citing specific statutes. If jurisdiction is
7 based on diversity of citizenship, a statement of the citizenship of every party and a
8 description of the amount in dispute shall be included. *See* 28 U.S.C. § 1332. The parties
9 are reminded that (1) a corporation is a citizen of the state where it is incorporated and the
10 state of its principal place of business, and (2) partnerships and limited liability companies
11 are citizens of every state in which their partners or members are citizens. *See* 28 U.S.C.
12 § 1332(c); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006);
13 *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). The parties are
14 further reminded that the use of fictitious parties (“John Doe” or “ABC Corporation”)
15 “casts no magical spell on a complaint otherwise lacking in diversity jurisdiction.” *Fifty*
16 *Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970);

17 5. Parties, if any, that have not been served, as well as parties that have not filed
18 an Answer or otherwise appeared, including fictitious parties. Unless counsel can otherwise
19 show cause, they shall submit with the Proposed Case Management Plan a proposed Order
20 dismissing any party that has not been served, including fictitious parties, and a motion for
21 the entry of default against any non-appearing party if the time for answering or otherwise
22 appearing has expired. If a party has been served but not appeared, Plaintiff(s) or
23 Counterclaimant(s) shall provide a copy of this Order to that party;

24 6. The names of parties not subject to the Court’s jurisdiction;

25 7. Whether there are dispositive or partially dispositive issues to be decided by
26 pretrial motions, and the legal issues about which any pretrial motions are contemplated;

27 8. Whether the case is suitable for reference to a United States Magistrate Judge
28 or a special master;

9. The status of related cases pending before other judges of this Court or before other courts;

10. A description of the parties' discussions of initial disclosures under Fed. R. Civ. P. 26(a);

11. Proposed deadlines (month/day/year)² for:

- (a) filing motions to amend the Complaint or to join additional parties;
- (b) if a patent case, exchange of patent claim constructions and filing of claim construction opening brief, response, and reply;
- (c) completion of all fact discovery;
- (d) disclosure of expert testimony by all parties under Fed. R. Civ. P. 26(a)(2);
- (e) disclosure of rebuttal expert testimony by all parties;
- (f) disclosure of all witnesses, exhibits and other matters under Fed. R. Civ. P. 26(a)(3);
- (g) closure of all discovery;
- (h) completing good faith discussions of settlement; and
- (i) filing dispositive motions, **including *Daubert* motions**;³

12. The scope of discovery, including any suggested changes in the limitations on discovery imposed by the Federal Rules of Civil Procedure, and whether discovery should be conducted in phases or should be limited to or focused upon particular issues. For example, where dispositive motions will be filed (*e.g.*, motions for summary judgment on a statute of limitations defense), counsel should consider limiting discovery to the issue at hand until the Court has ruled on the motion;

13. Estimated length of trial, and any suggestions for shortening the trial;

² The Court prefers to set deadlines for Fridays.

³ Evidentiary motions made under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

1 14. Whether a jury trial has been requested and whether the request for a jury
2 trial is contested. If the request for a jury trial is contested, the Proposed Case Management
3 Plan shall set forth the reasons that a trial by jury is in dispute;

4 15. The prospects for settlement, including any request to have a settlement
5 conference before another United States District Judge or a Magistrate Judge, or any other
6 request of the Court for assistance in settlement efforts;

7 16. In class actions, the proposed dates for class certification proceedings and
8 other class management issues. Such certification will result in the case being reassigned
9 to the complex track for case management purposes (*see* LRCiv 16.2);

10 17. Whether any unusual, difficult, or complex problems or issues exist that
11 require this case to be placed on the complex track for case management purposes (*see*
12 LRCiv 16.2); and

13 18. Any other matters that counsel believe will aid the Court in resolving this
14 case in a just, speedy, and inexpensive manner.

15 **IT IS FURTHER ORDERED** that counsel shall jointly file their Proposed Case
16 Management Plan (e-file the Plan using the Other Documents category and use the drop-
17 down event Report re: Rule 26(f) Planning Meeting) **not less than SEVEN (7) DAYS**
18 before the Pretrial Scheduling Conference. No extensions of time will be granted.


19 **IT IS FURTHER ORDERED** that it is the responsibility of counsel for Plaintiff(s)
20 to initiate the communications necessary to prepare the Joint Proposed Case Management
21 Plan. Once contacted by counsel for Plaintiff(s), counsel for Defendant(s) shall act in an
22 expeditious manner to effect the preparation of the Proposed Case Management Plan.

23 **IT IS FURTHER ORDERED** that counsel for all parties are expected to comply
24 with Fed. R. Civ. P. 26 and to minimize the expense of discovery.

25 **IT IS FURTHER ORDERED** that counsel must be prepared to discuss what the
26 parties must prove in order to prevail on their respective claims or defenses at the time of
27 the Pretrial Scheduling Conference and to discuss logistical matters.
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IT IS FURTHER ORDERED that this Court views the Pretrial Scheduling Conference as critical to its case management responsibilities and the responsibilities of the parties under Fed. R. Civ. P. 1. **FAILURE TO COMPLY WITH EVERY PROVISION OF THIS ORDER MAY LEAD TO SANCTIONS PURSUANT TO FED. R. CIV. P. 16(f).**

er, 2024.


Honorable John J. Tuchi
United States District Judge